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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NEW YORK STATE RESTAURANT
ASSOCIATION,**

Plaintiff,

- against -

**NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, and Thomas R. Frieden,
In His Official Capacity as Commissioner
of the New York State Department of Health
and Mental Hygiene,**

Defendants.

No. 2007 Civ. _____

**DECLARATION OF
MICHAEL LIEWEN**

MICHAEL LIEWEN hereby declares under penalty of perjury:

1. I am Vice President, Global Quality Assurance of Yum! Brands, Inc. Yum! Brands is the owner of several world famous restaurant brands, including KFC, Pizza Hut, and Taco Bell. Yum Brands' wholly-owned subsidiaries, KFC Corporation, Pizza Hut, Inc., and Taco Bell Corp. own, operate, franchise and license restaurants in and throughout the U.S., including hundreds of restaurant units in the five boroughs of New York City, New York. Yum! Brands is a member of the New York State Restaurant Association.

2. In my capacity as Vice President, Global Quality Assurance of Yum! Brands, I am the senior person at Yum! Brands responsible for overseeing the individual Quality Assurance functions at each of the restaurant brands. I am accountable for food safety, quality, nutrition, and regulatory compliance for Yum! Brands.

3. After I earned a doctorate in food science at the University of Wisconsin, I served on the faculty of the University of Nebraska for four years. I then worked in a variety of positions at General Mills for 18 years, and I joined Yum! Brands last year.

4. At Yum! Brands, we are committed to providing nutrition information to our consumers. We do so on our interactive websites, with posters and nutrition brochures in our restaurants, and with a toll-free number. We also communicate to our customers the message that there is more to a balanced, healthy lifestyle than calories alone. We stress the importance of eating a well-balanced diet, eating in moderation, and exercising. For reasons that I will explain below, we believe that New York City's new Regulation 81.50 forces us to communicate in ways that will be confusing to our customers and that will not provide information in a format that is effective. We therefore disagree with the way in which Regulation 81.50 requires us to communicate with our customers.

Yum!'s Approach to Providing Nutrition Information

5. Yum! Brands provides nutrition information to consumers in a variety of ways. First, we make nutrition information available to consumers in the restaurant through nutrition brochures. Many of our restaurants also display nutrition posters. The nutrition brochures provide comprehensive information for our core menu items. They disclose, for each item: serving size, calories, calories from fat, total fat, saturated fat, trans fat, sodium, carbohydrates, dietary fiber, sugars, and protein. They also disclose the percentage of recommended daily values of total fat, saturated fat, cholesterol, sodium, carbohydrates, and dietary fiber. Copies of the current brochures for KFC, Pizza Hut, and Taco Bell are attached.

6. Second, Yum! Brands offers a comprehensive nutrition section on its website for each brand. Moreover, each brand's website publishes its nutrition brochure, as well as the ingredients of each core menu item. Each website publishes the food exchange values of each

menu item for customers who have diabetes or who use food exchange values for weight control. For customers with food allergies, each website lists food allergens in each menu item. The websites provide an interactive feature that enables customers to customize any menu item, with the website calculating the calories, fat, saturated fat, cholesterol, sodium, carbohydrates, dietary fiber, and protein in the customized menu item. A customer can build a meal, with the website calculating this information (including percentages of daily values as noted above) for the entire meal, with each item customized.

7. Third, nutrition information is available to our customers through toll-free telephone numbers. Customer service representatives are trained to answer customers' questions and to provide nutrition information about our menu items. Like the written information, the customer service representatives can provide a customer with any or all of the information about the nutritional contents of the menu items.

Disagreement with Regulation 81.50.

8. While we want to provide our customers with calorie and other nutrition information—and do already provide such information in several ways—we disagree with the way that New York City is dictating that such information be supplied in store. We do not believe that the proposed menu board regulation will be an effective way to communicate with our customers about nutrition, for several reasons.

9. First, the requirement will not provide our customers who order customized food with accurate information. Many of our customers order meals that are highly customized. For example, the entire Taco Bell experience is built around customization, and nearly half of Taco Bell customers order a customized item rather than a standard item. The New York City regulation requires that a caloric range be posted for such items. But the ranges for these items can vary greatly. For example, a Fiesta Burrito can range between 330 calories and 740 calories.

There is simply not enough room on the menu board to give customers the information for a customized product, and so the customer using the menu board would have to guess where in the range the customized product fell.

10. Second, the requirement will lead to clutter on menu boards and will confuse customers who are looking for information there. This problem is likely to be particularly acute in drive-through lines, where space is limited. We believe that it will be difficult for a customer who is unfamiliar with our menu to scan and process caloric information in addition to the menu items and pricing.

11. Variety among menu choices is also the norm in our Pizza Hut and KFC restaurants. Pizza Hut offers pizzas with toppings in a wide variety of styles and amounts. In fact, at Pizza Hut a customer could choose 32,768 combinations of pizzas based on 15 available toppings. KFC, too, offers a range of preparation styles (original recipe, extra crispy, buffalo, honey BBQ, popcorn, strips), and kinds of pieces (wings, thighs, breasts, legs). Again, there is not room on the menu board to supply customized information. Rather, the New York City regulation requires the posting of ranges, but the ranges can be so great as to be of limited (if any) use for customers.

12. In addition, Pizza Hut and KFC offer family-style meals. A customer can buy (and customize) a bucket of chicken and a variety of side dishes; or a customer can buy (and customize) a whole pizza pie. In our brochures and on our websites, we provide per serving (or per piece) nutrition information for these items. What would the calorie disclosures be on a New York City mandated menu board for such family-style meals? If the disclosure would be another range, then the customer would not only have to guess where in the range her custom selection fell, but would then have to divide that guess by the number of people sharing the meal.

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2007

Michael B Liewen
Michael Liewen